

# MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

## Official Minutes February 2, 2005

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**MINUTES OF REGULARLY SCHEDULED HIGHWAYS AND  
TRANSPORTATION COMMISSION MEETING HELD IN  
JEFFERSON CITY, MISSOURI, ON WEDNESDAY, FEBRUARY 2, 2005**

A regularly scheduled meeting of the Missouri Highways and Transportation Commission held on Wednesday, February 2, 2005, in Jefferson City, Missouri, was called to order at 8:45 a.m. by Bill McKenna, Chair. The following Commissioners were present: Marjorie B. Schramm, Vice Chair, James B. Anderson, Duane S. Michie, and Larry D. Webber. Wallace S. Hartsfield was absent.

The meeting had been called pursuant to Section 226.120 of the 2000 Revised Statutes of Missouri, as amended. The Secretary verified that notice of the meeting was posted in keeping with Section 610.020 of the 2000 Revised Statutes of Missouri, as amended.

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Mr. Pete Rahn, Director of the Missouri Department of Transportation; Mr. Rich Tiemeyer, Chief Counsel for the Commission; and Mrs. Mari Ann Winters, Secretary to the Commission, were present on Wednesday, February 2, 2005.

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*"Department" or "MoDOT" herein refers to Missouri Department of Transportation.  
"Commission" or "MHTC" herein refers to Missouri Highways and Transportation Commission.*

## **CLOSED MEETING**

The agenda of the closed meeting was posted in keeping with Sections 610.020 and 610.022, RSMo., including the following statutory citations allowing the meeting to be closed:

1. Section 610.021(11), (12) – Specifications for competitive bidding, sealed bids, or negotiated contracts.
2. Section 610.021(1) – Legal actions and attorney-client privileged communications.
3. Section 610.021(3), (13) – Personnel administration regarding particular employees.

Immediately prior to closing its meeting, and upon motion duly made and seconded to convene in closed session, the Chair asked for a voice vote of the members. The vote was as follows:

Commissioner McKenna, Aye  
Commissioner Schramm, Aye  
Commissioner Michie, Aye  
Commissioner Anderson, Aye  
Commissioner Webber, Aye

The Commission met in the Closed Meeting from 8:15 a.m. until 8:45 a.m.

\* \* \* \* \*

## **APPROVAL OF MINUTES, REGULARLY SCHEDULED HIGHWAYS AND TRANSPORTATION COMMISSION MEETING, JANUARY 14, 2005**

Upon motion by Commissioner Michie, seconded by Commissioner Schramm, the Commission unanimously approved the minutes of its January 14, 2005, regularly scheduled meeting. The Chair and Secretary to the Commission were authorized and directed to sign and certify said minutes and to file same in the office of the Secretary.

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## **CONSENT AGENDA**

In order to make the most efficient use of Commission meeting time and to ensure the Commission members are well informed on issues requiring their action, the staff prepares and submits to the Commission members, in advance of their meeting, internal memoranda consisting of advice, opinions, and recommendations related to the items on the Commission meeting agenda. Those items considered by the staff to be of a routine or noncontroversial nature are placed on a consent agenda. During the meeting, items can be removed from the consent agenda at the request of any one Commission member. The items that are not removed from the consent agenda are approved with a single motion and unanimous vote by a quorum of the members.

Minutes reflecting approval of items on the consent agenda are singly reported herein and intermingled with minutes reflecting action on related subjects that were openly discussed. Reference to "consent agenda" is made in each minute approved via the process described in the paragraph above. Minutes reflecting action on items removed from the consent agenda and openly discussed reflect the open discussion and vote thereon.

No items were removed from the consent agenda. Upon motion by Commissioner Schramm, seconded by Commissioner Webber, all items on the consent agenda were unanimously approved.

\* \* \* \* \*

## **REPORTS OF COMMISSION COMMITTEES AND COMMISSION RELATED BOARDS**

The Commission has five standing committees: Audit Committee, Bond Financing Committee, Building Committee, Compensation Committee, and Legislative Committee. In addition, it elects Commission representatives to two boards: Missouri Transportation Finance Corporation and MoDOT and Patrol Employees' Retirement System. The following committee

reports were made during the February 2, 2005, meeting.

**Retirement** – Commissioner Anderson reported that the MoDOT and Patrol Retirement System Board of Trustees met on January 27, 2005, and reviewed several agenda items. Bills have been filed in the House and Senate to replace the MoDOT and Highway Patrol Retirement System Board of Trustees with the board for the Missouri State Employees’ Retirement System, which would essentially merge the two systems. Commissioner Anderson pointed out that, as currently proposed, the bills fail to identify any efficiencies and fail to clarify funding issues. He anticipated further dialogue with the members of the legislature on this issue.

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### **SHARE LEAVE COMMITTEE**

Dave DeWitt, Director of Administrative Services, recognized Lisa Machon and Rachelle Newham for completing two-year terms on MoDOT’s Share Leave Committee. The Share Leave Program allows employees to contribute annual leave (vacation) and compensatory time into pools to assist co-workers facing catastrophic or life-threatening situations.

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### **AMENDMENT 3 BOND PLAN STATUS**

Pat Goff, Director of Finance, briefed the Commission on the timeline for the upcoming bond issuance due to the passage of Amendment 3. The current plan is to sell the next series of state road bonds in June 2005 to provide funding for the “Smoother, Safer, Sooner” program. The first required Commission action will be approval of the recommended underwriting team at the March 2005 Commission meeting. The Commission thanked Mr. Goff for the information; no further action was taken.

\* \* \* \* \*

## **AUDITS AND INVESTIGATIONS ANNUAL REPORT**

Roberta Broeker, Director of Audits and Investigations, reviewed the Audits and Investigations Annual Report. She briefly discussed external audits, internal audits, contract monitoring, and investigations. She reported that in addition to the regular workload in calendar year 2005, she would be arranging training sessions for appropriate MoDOT employees pertaining to fraud in the antitrust area. Ms. Broeker said her goal was to minimize opportunities for antitrust violations.

Commissioner Michie commended Ms. Broeker and her staff for conducting their duties with the greatest degree of competence and integrity and with a view toward the betterment of the entire organization.

\* \* \* \* \*

## **PURCHASE OF INTELLIGENT TRANSPORTATION SYSTEM EQUIPMENT**

On behalf of the Director, Dave DeWitt, Director of Administrative Services, and Ed Hassinger, District 6 Engineer, recommended approval of a contract with Cohu, Inc., Electronics Division, to provide closed circuit television camera assemblies for the Intelligent Transportation System at an anticipated cost of \$269,115. The one-year contract includes the option to renew two times.

Via approval of the consent agenda, the Commission unanimously approved the recommendation, and authorized the Director, Chief Engineer, or Director of Administrative Services to execute the contract.

\* \* \* \* \*

## **PURCHASE OF WATERBORNE TRAFFIC MARKING PAINT**

On behalf of the Director, Dave DeWitt, Director of Administrative Services, and Herbert Wheeler, Resource Management Director, recommended an increase in the estimated expenditure for waterborne traffic marking paint from \$6.5 million (approved by the Commission on July 9, 2004, through the Fiscal Year 2005 budget process) to \$11.5 million. The increased cost estimate is the result of purchasing additional paint to accommodate a larger stripe and a 40 percent increase in cost, which has been attributed to an increase in the cost of the raw materials.

Via approval of the consent agenda, the Commission unanimously approved the recommendation.

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## **CONSIDERATION OF BIDS ON FEDERAL-AID AND STATE PROJECTS**

### **Award of Contracts January 21, 2005, Bid Opening**

On behalf of the Director, Dave Nichols, Director of Project Development, stated that bids for road and bridge improvement projects had been received on January 21, 2005.

Mr. Nichols presented a tabulation of the bids received on all projects and recommended awards be made to the lowest responsive and responsible bidder noted below. Mr. Nichols also recommended that Millgoal Enterprises, Inc., and Fulk Contracting, LLC, be declared non-responsive on Call 407 because companies with common owners/officers cannot bid on the same project.

<b>Route County Project</b>	<b>Bid Amount Plus 2% for Contingencies</b>	<b>Non- Contractual Costs</b>	<b><u>Contractor</u></b>
<b>Call 101</b>			
71 Nodaway J1P0830	\$2,580,436.46	\$656.00	Herzog Contracting Corp. St. Joseph, MO
<b>Call 102</b>			
B Nodaway J1S0812	855,004.55		Chester Bross Const.Co./ C. B. Equipment, Inc. Hannibal, MO
<b>Call 103</b>			
V Nodaway J1S0813	1,134,670.14		Loch Sand and Construction Co. Maryville, MO
<b>Call 104</b>			
6 Dekalb/Daviess J1L0500B B Harrison J1L0500C N and V Harrison J1L0500D 69 Harrison J1L0500E 116 Buchanan/Clinton J1M0046 46 Harrison J1M0047	2,709,727.64		Herzog Contracting Corp. St. Joseph, MO
<b>Call 105</b>			
229 Buchanan J1D0500A 229 Buchanan J1D0550B	5,267,209.47	4,736.00	Herzog Contracting Corp. St. Joseph, MO

6  
Buchanan  
J1D0500C  
36  
Buchanan  
J1D0500D  
169  
Buchanan  
J1D0500E

**Call 201**

70  
Saline/Cooper  
J2I0737

3,460,298.59

656.00

James H. Drew Corporation  
Indianapolis, IN

**Call 301**

47  
Lincoln  
J3P0712  
47  
Lincoln  
J3M0039

1,562,698.93

288.00

Chester Bross Const. Co./  
C. B. Equipment, Inc.  
Hannibal, MO

**Call 302**

KK  
Lincoln  
J3M0033

81,316.95

Sunrise Construction, Inc.  
St. Louis, MO

**Call 401**

2  
Johnson  
J4L0500A

254,540.61

Hilty Quarries, Inc.  
Clinton, MO

**Call 402**

50 and 350  
Jackson  
J4M0140

32,248.32

Dogwood Contracting, Inc.  
Centertown, MO

**Call 403**

70  
Lafayette  
J4I1701

223,371.84

Lehman Construction, L.L.C.  
California, MO

<b>Call 404</b> 470 Jackson J4M0139	45,060.95		Jared Sartin Kansas City, MO
<b>Call 406</b> 70 Lafayette J4M0142	77,211.14		Molawn Lawncare Kearney, MO
<b>Call 407</b> 29 and 152 Platte J4M0143	17,798.59		Locke Enterprises, L.L.C. Hannibal, MO
<b>Call 408</b> 169 Clay J4M0144	22,134.00		Dogwood Contracting, Inc. Centertown, MO
<b>Call 409</b> 7 Cass J4D0500A 71 Cass J4D0500B 71 Cass J4P1713 71 Bates J7D0500E	10,678,363.38	2,624.00	Chester Bross Const. Co./ C. B. Equipment, Inc. Hannibal, MO
<b>Call 411</b> 50 Johnson J4D0500G	6,763,427.76	656.00	Hilty Quarries, Inc. Clinton, MO
<b>Call 412</b> 70 Jackson J4D0500E 70 Jackson J4I1711	4,774,504.21	656.00	Superior Bowen Asphalt Company, L.L.C. Kansas City, MO

<b>Call 501</b>			
54	1,663,955.66	656.00	APAC-Missouri, Inc.
Camden			Columbia, MO
J5D0500C			
<b>Call 502</b>			
63	10,398,782.52	1,312.00	APAC- Missouri, Inc.
Boone/Callaway			Columbia,
J5D0500B			
<b>Call 503</b>			
70	3,708,034.89	1,312.00	APAC-Missouri, Inc.
Cooper			Columbia, MO
J5D0500A			
<b>Call 602</b>			
70	11,888,589.71	144.00	KCI Construction Company
St. Charles/St. Louis			St. Louis, MO
J6I1491			
<b>Call 604</b>			
N	1,357,836.96	5,596.40	Pace Construction Company
St. Charles			St. Louis, MO
J6S1670			
N			
St. Charles			
J6D0500B			
<b>Call 605</b>			
67	12,303,241.85	1,312.00	Chester Bross Const. Co./
St. Francois			C.B. Equipment, Inc.
J0D0500F			Hannibal, MO
67			
Jefferson			
J6D0500I			
<b>Call 606</b>			
30	18,253,078.66	2,624.00	Fred Weber, Inc.
Jefferson			Maryland Heights, MO
J6D0500H			
30			
St. Louis			
J6S1717			
30			
St. Louis City			
J6P1733			

**Call 608**

21	4,508,400.00	1,456.00	Pace Construction Company
St. Louis			St. Louis, MO
J6S1716			
21			
Jefferson			
J6D0500G			

**Call 610**

61	6,303,848.40	288.00	Fred Weber, Inc.
Jefferson			Maryland Heights, MO
J6P1703			

**Call 701**

71	10,605,074.27	8,519.52	APAC-Missouri, Inc.
Vernon			Columbia, MO
J7D0500F			
71			
Barton			
J7D0500H			
71			
Jasper			
J7D0500J			
171			
Jasper			
J7D0500K			
71			
Jasper			
J7D0500L			
66			
Jasper/Newton			
J7D0500N			
43			
Jasper/Newton			
J7D0500O			
Bus. 71			
Jasper			
J7S0708			
Bus. 71			
Jasper			
J7S0762			
Bus. 71			
Jasper			
J7U0676B			

**Call 702**

44  
Lawrence  
J7D0500C  
71  
Vernon  
J7D0500G  
71  
Jasper  
J7D0500I  
66  
Jasper  
J7D0500M  
Bus. 71  
Jasper  
J7D0500P

1,936,797.97

4,264.00

Freesen, Inc.  
Springfield, IL

**Call 801**

B  
Greene  
J8L0500  
T  
Greene  
J8L0500B

270,642.56

5,857.00

Leo Journagan Construction  
Co., Inc.  
Springfield, MO

**Call 804**

60  
Greene  
J8M0064  
MM  
Greene  
J8M0065

293,209.97

1,601.00

APAC-Missouri, Inc.  
Columbia, MO

**Call 805**

N  
Wright  
J8M0070  
Bus. 60  
Wright  
J8M0071  
60 O.R.  
Wright  
J8M0072  
60 O.R.  
Wright  
J8M0073

746,399.87

18,645.00

Chester Bross Const. Co./  
C.B. Equipment, Inc.

C  
Wright  
J8M0074  
PP  
Wright  
J8M0075  
ZZ  
Wright/Douglas  
J8M0076  
AM  
Wright/Texas  
J8M0077

**Call 806**

Bus. 65	546,971.33	656.00	Leo Journagan Construction
Christian			Co., Inc.
J8S0782			Springfield, MO

**Call 807**

AD	1,614,222.37	993.25	Burk Bridge Co.
Greene			Brookline, MO
J8S0681			

**Call 808**

Various	256,020.00		Collins & Hermann, Inc.
Hickory/Dallas/Laclede/Greene/ Ozark/Polk/Webster/Wright/ Christian/Douglas/Stone and Taney			St. Louis, MO
J8M0062			

**Call 902**

19	123,321.53		Micro-Surfacing, Inc.
Crawford			St. Louis, MO
J9M0053			

**Call 903**

44	99,956.23		Jefferson Asphalt Company
Crawford			Jefferson City, MO
J9I0552			

**Call 904**

63	507,614.42		Chester Bross Const. Co./
Texas			C. B. Equipment, Inc.
J9P0520			Hannibal, MO

<b>Call 905</b> 8 Washington J9P0523	811,812.66	9,160.00	APAC-Missouri, Inc. Columbia, MO
<b>Call 906</b> 63 Howell/Oregon J9P0517 Bus. 63 and 160 Howell J9M0055	945,865.34	17,264.00	Missouri Petroleum Products Company St. Louis, MO
<b>Call 907</b> BL44 and H Pulaski J9M0057 19 and J Dent J9M0060	611,913.95		Micro-Surfacing, Inc. St. Louis, MO
<b>Call 910</b> 160 Ripley J9M0059 160 Butler J0P0911	1,179,740.89	8,990.80	Pace Construction Company St. Louis, MO
<b>Call X01</b> 55 New Madrid/Pemiscot J0I0854 55 New Madrid/Pemiscot J0D0500C	13,180,823.27	984.00	Apex Paving Co./Chester Bross Construction/C.B. Equip. AJV Cape Girardeau, MO
<b>Call X02</b> 61 Cape Girardeau J0P0871	1,031,836.66		Lappe Cement Finishing, Inc. Perryville, MO
<b>Call X03</b> 55 Perry J0D0500G	9,319,825.80	656.00	Chester Bross Const. Co./ C.C. Equipment, Inc. Hannibal, MO

Totals	<u>\$155,007,841.27</u>	<u>\$102,562.97</u>
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Construction speed limits conform to the standard work zone speed limits shown on Standard Drawing No. 616.10 as approved by the Commission.

### **Authority to Reject Bids**

Mr. Nichols advised the Commission that bids were received January 21, 2005, for the following projects. He recommended the bids on call numbers 405, 607, 609, and 901 be rejected because they were considered excessive.

<b><u>Route</u></b>	<b><u>County</u></b>	<b><u>Project</u></b>
<b>Call 405</b>		
71	Jackson	J4M0141
<b>Call 607</b>		
270	St. Louis City	J6D0500A
70	St. Louis	J6D0500E
270/255	St. Louis/St. Louis City	J6M0093
<b>Call 609</b>		
340	St. Louis	J6D0500C
70	St. Charles	J6D0500D
64	St. Louis City/St. Louis	J6D0500F
<b>Call 901</b>		
17	Texas/Laclede	J9L0500I

### **Commission Action**

After consideration and upon motion by Commissioner Schramm, seconded by Commissioner Webber, the Commission took the following action. Chairman McKenna abstained from voting on Call Nos. 608, 609, and 610. Commissioner Michie abstained from voting on Call No. X01.

1. Awarded contracts to the lowest responsive and responsible bidders for bids received on January 21, 2005, as recommended and noted above, and authorized an additional three percent of the contract amount for contingencies. The Commission approved the allocation of funds covering the non-contractual costs for these projects as indicated on the above tabulation.
2. Rejected the bids on Call 405, Call 607, Call 609, and Call 901.
3. Declared as “non-responsive”, the bid of Millgoal Enterprises, Inc., and Fulk Contracting, LLC, on Call 407.

In keeping with the Commission’s Delegation of Authority to Execute Documents, the Director, Chief Engineer, or Director of Project Development may execute the contracts awarded above.

Director Rahn noted that the letting included the first Smooth Roads Initiative jobs, and he expressed pleasure with the competitive bids received. He stated that delivery of MoDOT’s highway improvement program is contingent upon competitive prices; therefore, the staff is continuing to diligently review all bids.

\* \* \* \* \*

#### **EXCHANGE OF ROADWAY RESPONSIBILITY, ROUTE AB, CAPE GIRARDEAU COUNTY**

On behalf of the Director, Scott Meyer, District 10 Engineer, presented a proposal wherein a new county road extending from the intersection of Routes 25 and 77 to the industrial park west of the Route AB/I-55 interchange would be constructed by Cape Girardeau County (Job No. J0S0860). MoDOT would then absorb the county road into its system and provide two 12-foot lanes and two 10-foot shoulders as an extension of Route AB. In exchange for MoDOT taking 3.6 miles of the new road into its system, Cape Girardeau County will absorb 4.4 miles of Commission-owned routes into the county system. In conjunction with this exchange, MoDOT

will construct a new four-way intersection joining Routes 25/77 and the Route AB extension (Job No. J0P0904). At the completion of both projects, the railroad crossing at County Road 220 will be relocated to the Route AB extension.

Via approval of the consent agenda item pertaining to Roadway Location and/or Design, the Commission unanimously approved the exchange of roadway responsibilities described above.

\* \* \* \* \*

## **ROADWAY LOCATION AND/OR DESIGN**

On behalf of the Director, District Engineers informed the Commission that preliminary plans and exhibits for the following projects were presented at the public hearing.

**Route I-64, St. Louis City  
Compton Avenue Overpass and Market Street Bridge over  
Westbound Forest Park Boulevard Ramp  
Job No. J6I1605  
Public Hearing Held August 26, 2004**

This proposed improvement provides for replacing bridges on Market over westbound Forest Park Boulevard ramp and Compton over I-64. Construct retaining walls, pavement drainage, lighting, signals, signing, and architectural elements. Remainder of property is city streets owned by St. Louis City. No acquisition of right of way is necessary to construct this improvement. Compton Avenue will be closed from north of Spruce Street to north of Market Street. Market Street will be closed at the intersection of Compton Avenue and Market Street. Detour routes will be in place for the duration of the Compton and Market bridge closure. This project is 0.2 mile in length.

Mr. Ed Hassinger, District 6 Engineer, recommended approval of the location, design and road closure as presented at the public hearing.

**Intersection of Routes 25/77 with the Route AB Extension  
Cape Girardeau County  
2.5 Miles South of Dutchtown, at Blomeyer  
Job No. J0P0904**

**Public Hearing Held December 9, 2004**

This proposed improvement involves reconstructing the intersection at Blomeyer to accommodate the proposed Route AB extension (Project J0S0860), which will be constructed concurrently. This project will have limited access right of way. Traffic will be staged and flagged with a temporary bypass allowing continuous movement of through traffic. This project is 0.3 mile in length.

Mr. Scott Meyer, District 10 Engineer, recommended approval of the location and design as presented at the public hearing.

**Route AB Extension, Cape Girardeau County  
From the Intersection of Routes 25 and 77  
To the Cape Girardeau Industrial Park,  
West of the Route AB/I-55 Interchange  
Job No. J0S0860**

**Public Hearing Held December 9, 2004**

Project J0S0860 is a joint venture between Cape Girardeau County and the Missouri Department of Transportation. This proposed improvement will provide a new county road from the intersection of Routes 25 and 77 to the industrial park west of the Route AB/I-55 interchange, constructed by Cape Girardeau County. MoDOT will then absorb this county road into its system and provide two 12-foot lanes and two 10-foot shoulders as an extension of Route AB. This project has normal access right of way. Traffic will not be allowed to access the new road until construction of the pavement and project J0P0904 are complete. This project is 3.6 miles in length.

Mr. Scott Meyer, District 10 Engineer, recommended approval of the location and design as presented at the public hearing.

After full consideration of the favorable and adverse economic, social and environmental effects of the recommended designs, the Commission, via approval of the consent agenda,

unanimously found and determined the recommended designs would best serve the interest of the public and approved the recommendation.

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## **RATIFICATION OF APPROVAL OF RIGHT OF WAY PLANS FOR CONDEMNATION**

On behalf of the Director, Dave Nichols, Director of Project Development, recommended the Commission ratify the approval of the Chief Engineer of the following right of way plans which have been filed for condemnation.

<b><u>County</u></b>	<b><u>Route</u></b>	<b><u>Job Number</u></b>	<b><u>Date Commission Approved Design</u></b>
Adair & Macon	63	J2P0485	May 4, 2001 (3 <sup>rd</sup> amended)
Saline	Bus 65	J2P0702	December 5, 2003 (1 <sup>st</sup> amended)

In accordance with Section 227.050 RSMo, the Commission, via approval of the consent agenda, approved the right of way plans for the above noted projects and directed they be filed as necessary for the condemnation of right of way.

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**-- REPORTS --**

**FINANCIAL ACCOUNTABILITY REPORT,  
QUARTERLY REPORT**

Pat Goff, Director of Finance, presented the Financial Accountability Quarterly Report for the period ending December 31, 2004.

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**BUDGET COMPARISON REPORT**

Jim Deresinski, Controller, presented the budget comparison for fiscal year 2005 through December 31, 2004.

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**- ADMINISTRATIVE HEARINGS -**

**IN THE MATTER OF REQUEST FOR  
ADMINISTRATIVE REVIEW OF NOTICE  
TO REMOVE OUTDOOR ADVERTISING  
HEARING NO. 03-07-407  
TREASURE ALLEY ANTIQUES, APPLICANT  
ADMINISTRATIVE HEARING NO. 732**

This is the final decision and order of the Missouri Highways and Transportation Commission following a request for administrative review of a *Notice to Remove Outdoor Advertising* issued under Section 226.580 RSMo. (Supp. 2003) by the Missouri Department of Transportation (hereinafter, Department) to Treasure Alley Antiques (hereinafter, Applicant).

A hearing was conducted by Hearing Examiner Dan Pritchard in the Hearing Room of the State Highway and Transportation Building, Jefferson City, Missouri, on September 22, 2004. The Department was represented by Megan Waters-Hamblin, Assistant Counsel, and David Woodside, Senior Assistant Counsel. The Applicant did not appear, but did submit a letter outlining its position on the matter. (T. 5, 6, Applicant Ex. 1). The case was submitted on the record. Hearing Examiner Dan Pritchard resigned as hearing examiner effective January 1, 2005 and the matter was reassigned to Hearing Examiner Bryce Gamblin.

Having considered all the competent and substantial evidence upon the whole record, we find as follows:

**FINDINGS OF FACT**

This hearing involves an outdoor advertising structure. (T. 9, Ex. A, C) owned and maintained by Applicant adjacent to Business Highway 71 (Range Line) in Webb City, Jasper County at county log mile 5.33 on the right side of the road. (T. 14, 17, Ex. A).

The sign was erected approximately within a month prior to April 17, 2003. (T. 16).

The sign is visible from the main traveled way and is located within approximately 10 feet of the right-of-way of Business Highway 71, which is a part of the national highway system in Missouri. (T. 14, 15).

The sign is being maintained without a permit issued by the Department. (T. 15, 18).

The subject sign is located approximately 300 feet from a sign that has obtained a permit from the Department and currently advertises a McDonald's restaurant. (T. 14, 16). The sign advertising McDonald's restaurant was built pursuant to a permit issued by the Department in 1992 and is located on the same side of the highway as the Applicant's sign. (T. 14, 16). The subject sign was not erected at the time the permit was issued for the sign advertising McDonald's restaurant. (T. 17).

The sign is located within the city of Webb City and the zoning of the property where the subject sign is located is commercial. (T. 17).

The Department issued a *Notice to Remove Outdoor Advertising* for the sign, which was received by the Applicant. (T. 10, 11; Ex. A, B).

### CONCLUSIONS OF LAW

The Commission has jurisdiction under Section 226.580 RSMo. (Supp. 2003). The sign was erected after March 30, 1972, is adjacent to and within 660 feet of the nearest edge of the right-of-way, and is visible from the main traveled way of a road that is a part of the national highway system and, thus, subject to the requirements of Sections 226.500 to 226.600 RSMo. and the Commission's administrative rules regarding outdoor advertising.

Section 226.580.1(2) RSMo. (Supp. 2003) and 7 CSR 10-6.080(2)(B) prohibit signs for which a permit is not obtained as prescribed in Sections 226.500 to 226.600 RSMo. We conclude the sign violates that prohibition and, thus is subject to removal as an unlawful sign.

Drury Development Corp. v. State Highway Commission, 637 S.W.2d 354 (Mo. App. W.D. 1982); Osage Outdoor Advertising, Inc. v. Missouri Highway and Transportation Commission, 677 S.W.2d 389 (Mo. App. S.D. 1984).

In addition to failure to obtain a permit, Applicant's sign violates 226.540(3)(a) RSMo. (Supp. 2003) and 7 CSR 10-6.040(3)(A) relating to spacing between outdoor advertising structures. Section 226.540(3)(a) RSMo (Supp. 2003) requires 1,400 spacing between structures on the same side of the highway. Applicant's sign is located approximately 300 feet from a permitted sign on Business 71 and, as such, Applicant's sign violates 226.540(3)(a) RSMo. (Supp. 2003) and 7 CSR 10-6.040(3)(A) and is subject to removal. Gannett Outdoor Advertising Co. v. Missouri Highway and Transportation Commission, 691 S.W.2d 915, 917 (Mo. 1985); State ex rel National Advertising Company v. State Highway Commission, 624 S.W.2d 453, 459 (Mo. App. W.D. 1981).

The Department properly issued the *Notice to Remove Outdoor Advertising*.

#### ORDER

It is, therefore, the order of the Commission that Applicant cause the sign to be removed within 30 days of the date of mailing of this order.

This report and order was adopted by unanimous vote of all Commission members present.

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**IN THE MATTER OF REQUEST FOR  
ADMINISTRATIVE REVIEW OF NOTICE  
TO REMOVE OUTDOOR ADVERTISING  
HEARING NO. 03-07-409  
LARRY W. BROWN, APPLICANT  
ADMINISTRATIVE HEARING NO. 733**

This is the final decision and order of the Missouri Highways and Transportation Commission following a request for administrative review of a *Notice to Remove Outdoor Advertising* issued under Section 226.580 RSMo. (Supp. 2003) by the Missouri Department of Transportation (hereinafter, Department) to Larry W. Brown (hereinafter, Applicant).

A hearing was conducted by Hearing Examiner Dan Pritchard in the Hearing Room of the State Highway and Transportation Building, Jefferson City, Missouri, on September 22, 2004. The Department was represented by Megan Waters-Hamblin, Assistant Counsel, and David Woodside, Senior Assistant Counsel. The Applicant did not appear. The case was submitted on the record. Hearing Examiner Dan Pritchard resigned as hearing examiner effective January 1, 2005 and the matter was reassigned to Hearing Examiner Bryce Gamblin.

Having considered all the competent and substantial evidence upon the whole record, we find as follows:

**FINDINGS OF FACT**

This hearing involves an outdoor advertising structure. (T. 6, Ex. A, C) owned and maintained by Applicant adjacent to Interstate 44 in Lawrence County at county log mile 1.08 on the right side of the road. (T. 11; Ex. A).

The sign is visible from the main traveled way and is located within approximately 150 feet of the right-of-way of westbound Interstate 44, which is a part of the interstate highway system. (T. 11).

The permit inspector drove by this location approximately 2-3 times per month during her tenure as permit inspector and did not see the sign in 2003. (T. 11-12). The permit inspector first noticed the sign around January 13, 2004. (T. 11-12).

The sign is being maintained without a permit issued by the Department. (T. 12).

There are no substantial or permanent buildings or utilities within 750 feet of the sign. (T. 12). The sign is not located within any city limits and the sign is located on land that is unzoned. (T. 12-13).

The Department issued a *Notice to Remove Outdoor Advertising* for the sign, which was received by the Applicant. (T. 7-8; Ex. A, B).

#### CONCLUSIONS OF LAW

The Commission has jurisdiction under Section 226.580 RSMo. (Supp. 2003). The sign was erected after March 30, 1972, is adjacent to and within 660 feet of the nearest edge of the right-of-way, and is visible from the main traveled way of an interstate highway and, thus, subject to the requirements of Sections 226.500 to 226.600 RSMo. and the Commission's administrative rules regarding outdoor advertising.

Signs erected or maintained after March 30, 1972, within 660 feet of the nearest edge of the right-of-way of a primary or interstate highway are regulated and limited to (1) directional and other official signs and notices; (2) on-premise signs; (3) signs located in areas zoned commercial, industrial, or the like; (4), signs located within 750 feet of an unzoned commercial or industrial establishment when located in a county without zoning regulations; and (5) nonconforming signs. Sections 226.520 RSMo. (2000), Section 226.540 RSMo. (Supp. 2003), Section 226.550 RSMo. (Supp. 2003), and 7 CSR 10-6.060(2).

Section 226.580.1(1) RSMo. (Supp. 2003) and 7 CSR 10-6.080(2)(A) prohibit signs

erected after March 30, 1972, contrary to the provisions of Sections 226.500 to 226.600 RSMo. We conclude the sign violates the location provisions of Sections 226.520 RSMo. (2000) and 226.540 RSMo. (Supp. 2003) and, thus, is subject to removal as an unlawful sign.

Section 226.580.1(2) RSMo. (Supp. 2003) and 7 CSR 10-6.080(2)(B) prohibit signs for which a permit is not obtained as prescribed in Sections 226.500 to 226.600 RSMo. We conclude the sign violates that prohibition and, thus is subject to removal as an unlawful sign. Drury Development Corp. v. State Highway Commission, 637 S.W.2d 354 (Mo. App. W.D. 1982); Osage Outdoor Advertising, Inc. v. Missouri Highway and Transportation Commission, 677 S.W.2d 389 (Mo. App. S.D. 1984).

Signs located in zoned commercial or unzoned commercial areas are permitted exceptions to the general prohibition on outdoor advertising contained in Section 226.520 RSMo. (2000). Applicant has the burden of proving that the sign is located within one of the exceptions. Superior Outdoor Advertising v. State Highway Commission of Missouri, 641 S.W.2d 480, 484 (Mo. App. S.D. 1982). Applicant failed to meet its burden.

The Department properly issued the *Notice to Remove Outdoor Advertising*.

#### ORDER

It is, therefore, the order of the Commission that Applicant cause the sign to be removed within 30 days of the date of mailing of this order.

This report and order was adopted by unanimous vote of all Commission members present.

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By unanimous vote of all members present, the meeting of the Commission was adjourned.

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**STATE OF TRANSPORTATION ADDRESS,  
JOINT SESSION OF THE GENERAL ASSEMBLY**

Following adjournment, the Commission attended the Joint Session of the General Assembly to hear Director Pete Rahn deliver the State of Transportation address. That address is printed in its entirety below.

**Pete Rahn  
State of Transportation Address  
Jefferson City, Missouri  
February 2, 2005**

Lt. Governor, Mr. Speaker, Mr. President Pro Tem, Distinguished State Officials, Members of the 93<sup>rd</sup> General Assembly, Members of the Missouri Highways and Transportation Commission, and Citizens of Missouri:

Transportation is vital to the great state of Missouri. I'm sure you're impressed that I have figured that out in just four and a half short months.

Transportation allows the lifeblood of commerce to flow to every extremity of America and the world.

- It accounts for 11 percent of our nation's Gross **Domestic** Product - second only to health care.
- U.S. households spend up to 19 percent of their income on transportation - second only to housing.
- Nine cents of every dollar spent by consumers on manufactured goods is for transportation.
- 14 cents of every dollar spent by consumers on agricultural products is for transportation.

Unfortunately, the factors that take a toll on this essential system keep increasing. And it's important to note, our highways and even the Interstates were never designed to accommodate the types and volumes of traffic they encounter today.

- Large trucks on our highways increased by 132 percent between 1990 and 2000.
- The growth of "just-in-time inventory" with its dependence on rapid shipping will cause freight tonnage on our highways to increase by 70 percent in the next 15 years.
- International trade, which obviously depends on transportation infrastructure, grew from 900 billion dollars in 1990 to 2.2 trillion dollars in 2000.
- The average American spends 443 hours annually behind the wheel of an automobile.

Nationally, these things have stretched our transportation system to its limit.

- 46 percent of our National Highway System and 90 percent of our urban

interstates will be beyond capacity by 2020.

- Congestion in our urban areas accounts for 4.5 billion hours of delay and 6.8 billion gallons of wasted fuel every year.

So, what about Missouri?

- We have the nation's third worst pavement conditions.
- Of Missouri's major highways, 54 percent of the pavement is in fair to poor condition.
- We are fourth in the nation in the number of deficient bridges on our system.
- Additionally, I-70 is in a state of near crisis. I-70, now almost 50 years old, was designed for a 20-year lifespan.
- This problem promises to get worse. Traffic on I-70 is expected to double by the year 2030
- Meanwhile, I-44 is an I-70 just waiting to happen. We observe many of the same problems on this vital interstate as on I-70.

These troubling conditions are easy to understand when you consider that:

- We have the seventh largest highway system in the country.
- In fact, you could combine all of the state highways in Iowa, Nebraska and Kansas and it still would not equal the size of Missouri's system.
- Yet we are 42nd in the amount of money we spend on that system per mile.
- Of the eight states surrounding Missouri, only Arkansas spends less per mile of highway than we do.
- Our fuel tax is tied for the 10<sup>th</sup> lowest compared to all other states.
- In fact, our fuel tax of 17 cents -adjusted for inflation - is worth just over 8 cents today in purchasing power.
- For example, the first fuel tax from 1924 of 2 cents would have to be 21 cents today to buy as much.
- At the same time, we rank seventh in the number of bridges on our state system -- more than 10,000.
- And we are first in the nation when it comes to major river bridges. In fact, you could combine about 25 other states and they still wouldn't have as many as us.
- Additionally, Missouri is 15<sup>th</sup> in the number of vehicle miles traveled with more than 68 billion per year.

We certainly face a challenge, but I know that together we can meet it. The importance of transportation to Missouri is too great not to act. If transportation allows the lifeblood of commerce to flow, then Missouri, at the center of the world's largest economy, should be the heart pumping that blood to every part of the world resulting in economic prosperity right here at home.

Fellow Missourians, our state transportation system is deficient, but your state transportation department is committed to fixing it. We are energized by an optimistic vision for the future. Your MoDOT today is a vibrant agency that cares deeply about the people we serve. We have challenged and empowered every employee to continuously improve the level of service each provides to every Missourian.

I can tell you, the most effective ideas for improving this department will come from the collaboration of our entire transportation team. I want the people closest to the problems to be the ones to solve them because they want to, not because they were told to. Every crew worker who wields a shovel, every engineer who picks up a set of plans and every clerk who works at a computer should believe they “own” their job.

Authority to make necessary changes and improvements will not be concentrated here in Jefferson City. It will be dispersed to every corner of this great state. This approach is commonly referred to as decentralization. I call it common sense.

With this empowerment will come a new kind of accountability. A new kind of credibility. A new kind of state agency.

We will be a model for what today's state government should be - efficient, streamlined, forward-thinking, results-driven and customer-oriented. I have heard many of you say that you have seen a lot of improvement in MoDOT over the past few years. To that we say, “Thank you, but you ain't seen nothin' yet.”

We will be a shining star in your state government galaxy.

Now, I know what you're thinking, “this is the show-me state. You're going to have to show us.” Well, we intend to. We will be a transparent organization. You will see what we do well. You will see what we don't do so well and you will see what we do to get better.

MoDOT will be an open house. Our walls will be solid, but you will be able to see everything we do. Information about how we spend your money, our goals for improving transportation and our progress toward these goals will be distributed to statewide officials, lawmakers, the media and anyone else who wants it.

Plus, this information will be made available on our Internet site for the whole worldwide web to see. By conducting business in full view of the taxpayers of this state, we will encourage all Missourians to hold us accountable and to propose transportation solutions.

Our transparent house, however, will not be fragile. It will not be built on the shifting sands of promises we can't deliver or commitments we can't keep. It will be built on the solid rock of sound business practices, wise use of taxpayer dollars and extensive public input. MoDOT's house will be strong!

And, since you don't build a house starting with the top floor, the foundation of our house will be the results we deliver and the performance measures we track, which will produce an unparalleled level of accountability.

Last year from this dais, many of you heard that a new day had dawned at MoDOT. This year I reaffirm that statement. Morning has broken. The sun is rising on our transportation horizon.

And thousands of rays of sunlight in the form of MoDOT employees and our citizen-partners are illuminating the morning sky with a message of cooperation and progress.

Ladies and gentleman, can you tell that I am thrilled to be your director of transportation and to have the opportunity to address you today? I am thrilled to call myself a Missourian. I am thrilled to work with such dedicated public servants. And I am thrilled at the possibilities of our transportation future.

And, it really is an exciting time for transportation in Missouri. On November 2, 2004, four out of five voters in this state said they wanted their roads fixed and they trusted MoDOT to do it.

Since then we've worked extremely hard to identify needs and get projects under contract. Today, we're saying to Missourians that MoDOT is ready to deliver, and the improvements will be noticeable and quick.

We come to you with a shared vision of smoother, safer roads that will be built sooner. Missourians have sent a clear message that they want smoother, safer highways. Today, we send a clear message that smoother, safer highways are exactly what they will get.

Therefore, we have embarked on an ambitious initiative for our transportation future -- ambitious to the tune of more than 1.7 billion dollars in vital improvements.

Three hundred sixty million dollars (\$360 million) will fund 177 projects in the Smooth Roads Initiative - the first element of our Smoother, Safer, Sooner plan. This initiative will provide 2,200 miles of better pavement for a smoother drive, as well as a brighter, more visible roadway to help on stormy nights, and safer shoulders with rumble strips, all by the end of 2007. Today, three quarters of those miles are in fair to poor condition.

The highway miles included in the Smooth Roads Initiative account for 60 percent of all traffic on the state system. These roads include interstates, major highways in the metropolitan areas and highway corridors connecting smaller towns throughout our state. 86 percent of Missouri's population lives within 10 miles of these roads.

Amendment 3 will also allow for bond financing to accelerate more than 430 million dollars in high-priority construction projects. These 55 projects, which comprise the second element of the Smoother, Safer, Sooner program, were already scheduled to begin in the next five years, but work can now begin much sooner - several years sooner, in many cases. Speeding up these projects will have an enormously positive impact on the safety and economic well being of our citizens.

Examples of major projects to be built sooner include:

- Rehabilitation of the Route 67 Missouri River Bridge crossing in St. Louis
- Major congestion relief work on the Triangle in Kansas City
- Completion of Route 61 four laning in northeast Missouri
- And completion of the four-lane Route 71 corridor south of Joplin

The third element of Amendment 3 will be determined later this spring after working with our planning partners statewide, when 1.3 billion dollars in additional bond-financed projects will be announced. These will be new projects not currently in our five-year plan. Our goal is to invest these funds in projects that will have a substantial impact on our overall transportation system.

And I want to stress--every dollar of Amendment 3 revenues will go our roads. No new buildings. No added personnel.

Our plans do not center solely on Amendment 3 funding, however.

We support efforts to allocate more money for other transportation modes such as aviation, rail, waterways and public transit. Legislation is expected to be introduced to direct the sales taxes that highway construction contractors are currently paying, and which amount to a mini-diversion, toward multi-modal services.

The multi-modal plan would allow us to improve our airports that are key to economic development throughout this state. It would increase access to Missouri's railroads and river barges. And it would allow for more public transportation options in both our large cities and small towns by building facilities and helping to match Federal dollars for capital equipment purchases.

Our plan is a total transportation plan. It is ambitious, but we are ambitious. We will confront the realities of the present and anticipate the challenges of the future. We will seek to unite based on the priorities of where we live, which is in Missouri. We will listen to all Missourians and we will seek to do what is best for all of Missouri.

MoDOT is excited about the opportunity to better serve all Missourians. I see excitement within MoDOT that I've been told has not existed for many years. We are excited to be able to do the things we like to do - fix our roads, help people and, ultimately, save lives.

We like to build roads. We like to delight our customers with smooth roadways, four-lane highways, brighter striping, better signs, wider shoulders and lots of other improvements.

Amendment 3 will help, but it will not solve all our problems. In fact, the money from Amendment 3 will only move us from 44<sup>th</sup> lowest nationally in revenue per mile to 42<sup>nd</sup> lowest. That is not a big jump. We will, however, do more with that two spot increase than you would have ever thought.

You will see the results. You will feel the results. And you will hear about the results from your constituents who will be confident that their tax dollars are going toward their intended purpose - better highways.

We, at MoDOT, also like to help people. Martin Luther King, Jr., often told the story of two travelers journeying down a dangerous road. Seeing a man needing help, the first traveler said, "What will happen to me if I stop and help the man in need?" The second traveler said, "What will happen to the man in need if I do not stop to help?"

Many MoDOT employees have decided to stop and help, going above and beyond the call of duty to help their fellow Missourians.

- When an MFA propane truck overturned on Route O in Johnson County, three of your MoDOT Good Samaritans, Jesse Dunkle, Brian Terrell and Loren Dickmeier, pulled the driver from his burning truck, called 911 and flagged traffic around the crash.
- When MoDOT employee Larry Boeschen found a dog that had been hit by a car alongside I-435 near Smithville, he took off the dog's collar, called its veterinarian and gave a family with two young children the opportunity to say "good-bye" to their beloved friend named "Rocket".
- When MoDOT Waterways Program Manager Sherrie Martin found out that the executive director of the New Madrid Port Authority had to take time off because of serious health issues, she traveled to southeast Missouri and virtually assumed her customer's job as executive director of the Port Authority ensuring that vital projects were completed.
- And when the President of the United States called upon the men and women of the Missouri National Guard to aid in bringing freedom to Iraq, MoDOT employees answered the call. Matt Bacon used his MoDOT training to help rebuild roads and infrastructure in the war torn country. Meanwhile, Bruce Pettus utilized his experience with St. Louis Motorist Assist and incident management to invent a rear armor guard for Humvees that is now standard on all such vehicles sent to Iraq.

Matt, Bruce and all the people I mentioned who cared enough to help are here today. I ask them to stand and receive the recognition they deserve.

MoDOT wants to "stop and help" even more along the path. Because of this, it is vital we seek new ways to save more lives. Each year we lose 1,200 mothers, fathers, sons and daughters on Missouri's roads. Something must be done.

One thousand two hundred people killed on our highways is the equivalent of the entire population of communities like Mound City or Lincoln, or New Franklin, or Pasadena Hills or Puxico. Additionally, 69,000 people are injured in traffic crashes every year. That is roughly equivalent to the populations of Cass, or Cape Girardeau or Cole Counties. Something must be done.

Far too many of those who die on our highways are our young people. In 2004, 132 drivers under the age of 21 were killed on Missouri's roadways. These youths accounted for nearly 30 percent of all crashes. Their average age was 17.9 years old. Clearly. Urgently. Something must be done.

Mother's Against Drunk Driving, Triple A, SAFE KIDS St. Louis, the Missouri Association of Insurance Agents, the safety Council of the Ozarks and numerous other organizations know

exactly what that something is. On their behalf, on behalf of all those killed or injured on our roadways and on behalf of too many children whose parents never come home again--we plead to you to enact a primary seat belt law this year. We haven't a moment to lose because we have already lost too many Missourians.

We have the opportunity to save at least 90 lives every year on the highways of Missouri. A law that allows law enforcement officers to simply enforce our existing seat belt law could do exactly that. I realize that many believe this is an issue of individual choice. I would suggest that is not the issue at all. State law already says that everyone must wear a seatbelt. The question now is "Will we allow our law enforcement officers to enforce the law?"

It makes sense to enact a primary safety belt law. It is the most cost effective way to save lives that Missouri has available. It won't cost a dime more in taxpayer money. However, the cost of inaction is far too high. Let's start saving those lives this year.

In his Inaugural Address, Governor Matt Blunt said, "...we will be bold. We will be willing to experiment. We will not fear failure. We will bear setbacks with resolve and press forward with determined innovation. We will attack problems with the deliberation that accompanies this great responsibility and with the energy necessary to build a better Missouri."

MoDOT is up to Governor Blunt's challenge. We will be bold. We will be willing to experiment. We will not fear failure. We will be determined. We will attack problems and we will be energetic. We are committed to going from being a good organization to being a great organization.

We cannot, however, make our transportation system great without all of you. Elected officials, private citizens and anyone else who cares about building a better Missouri will have a seat at the transportation table. We will seek your opinions like never before because your MoDOT knows that we don't have all the answers. We also know that many of the best ideas come from the people we serve.

I was once told of an exchange between Nelson Mandela when he was President of South Africa and the international press corps at a news conference in Johannesburg. A young reporter asked Mandela how he could justify having spent 27 years in prison in support of an idea no one thought could become a reality. Mandela smiled and said his mother had told him that there were three kinds of people in the world:

- The first left nothing behind, not even their name, when they departed
- The second left only the bad things they had done
- And the third left the world a little better off.

Nelson Mandela then asked, "How could I let my mother down?"

Well, I don't think any of us want to let our mothers down!

We are committed to achieving goals that many think will never become reality, but together we can leave our part of the world...a little better off.

As famous Missourian Walt Disney said, “It's kinda fun to do the impossible.”

Alone, MoDOT cannot make our transportation system great, but, together, we can.

Together, we can save lives on our highways.

Together, we can make our roadways better.

Together, we can encourage economic prosperity.

Together, we can provide greater transportation services in every part of this state.

Together, we can be great.

Thank you. May God bless America, may God bless Missouri and may God bless your travels.